

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff,

-v.-

PORTRAIT OF WALLY,
A PAINTING BY EGON SCHIELE,

Defendant *in Rem*.
-----X

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/20/10

99 Civ. 9940 (LAP)

**AMENDMENT TO STIPULATION AND ORDER OF SETTLEMENT AND
DISCONTINUANCE, DATED JULY 19, 2010**

This will serve as an Amendment to Stipulation and Order of Settlement and Discontinuance, dated July 19, 2010 (the "Stipulation"), by and among the United States of America (the "Government"), the Estate of Lea Bondi Jaray (the "Estate") and the Leopold Museum Privat-Stiftung (the "Foundation").

The Government, the Estate, the Foundation and the Museum of Modern Art ("MoMA") hereby agree that the Stipulation is hereby amended as follows:

The paragraph entitled " 9. Releases" in the Stipulation is deleted in its entirety and replaced by the following:

9. Releases. In consideration of the promises and covenants referenced herein, the Parties and the Museum of Modern Art ("MoMA") hereby agree to the following releases, effective upon the dismissal of the Action, as provided herein:

a. Release by the Foundation. The Foundation, on behalf of itself and its past, present and future predecessors, successors, assigns, affiliates, subsidiaries, divisions, parents and related entities, heirs, agents, executors, administrators, employees, officers, directors, shareholders, partners, trustees, owners, advisors, receivers, indemnitors, indemnities, attorneys, insurers, transferees and representatives (including, but not limited to all present, past and future Vorstandsmitglieder) of any kind whatsoever (the "Foundation Releasers"), irrevocably and unconditionally releases, settles, relinquishes, remises, acquits and fully, finally and forever discharges the Government (including, without limitation, the United States Attorney's Office for the Southern District of New York ("USAO"), ICE, CBP, the Department of Homeland Security ("DHS"), the United States Customs Service, and the Department of Treasury) the Estate, and MoMA together with their past, present and future predecessors, successors, assigns, affiliates, subsidiaries, divisions, parents and related entities, heirs, agents, executors,

administrators, employees, officers, directors, shareholders, partners, trustees, owners, advisors, receivers, indemnitors, indemnities, attorneys, insurers, transferees and representatives of any kind whatsoever (the "Government, the Estate and MoMA Releasees"), of and from any and all claims, demands, damages, actions, causes of action, debts, costs, expenses, compensation, liabilities, controversies or agreements of any kind whatsoever, arising out of, relating to or in any way connected with any action or inaction that has occurred prior to or upon the date hereof, which the Foundation Releasors ever had, now has or hereafter can, shall or may have against or concerning the Government, the Estate and MoMA Releasees, arising out of, resulting from, or in any way connected with the Painting or the matters or events alleged in the Action. It is understood and agreed that this is a full and final release made to fully and finally compromise any and all claims which were or could ever be asserted by the Foundation Releasors against the Government, the Estate and MoMA Releasees concerning the Painting or the matters or events alleged in the Action; provided however, that this release does not apply and is without prejudice to any claim the Foundation may have against the Government and the Estate for a breach of this Stipulation. Nothing in this release shall in any way release, discharge or relieve the Government or the Estate from any of its obligations under this Stipulation.

b. Release by the Estate. The Estate, on behalf of itself and its past, present and future predecessors, successors, assigns, affiliates, subsidiaries, divisions, parents and related entities, heirs, agents, executors, administrators, employees, officers, directors, shareholders, partners, trustees, owners, advisors, receivers, indemnitors, indemnities, attorneys, insurers, transferees and representatives of any kind whatsoever (the "Estate Releasors"), irrevocably and unconditionally releases, settles, relinquishes, remises, acquits and fully, finally and forever discharges the Government (including, without limitation, the USAO, ICE, CBP, DHS, the United States Customs Service, and the Department of Treasury) the Foundation and MoMA, together with their past, present and future predecessors, successors, assigns, affiliates, subsidiaries, divisions, parents and related entities, heirs, agents, executors, administrators, employees, officers (including, but not limited to all present, past and future Vorstandsmitglieder), directors, shareholders, partners, trustees, owners, advisors, receivers, indemnitors, indemnities, attorneys, insurers, transferees and representatives of any kind whatsoever (the "Government, the Foundation and MoMA Releasees"), of and from any and all claims, demands, damages, actions, causes of action, debts, costs, expenses, compensation, liabilities, controversies or agreements of any kind whatsoever, arising out of, relating to or in any way connected with any action or inaction that has occurred prior to or upon the date hereof, which the Estate Releasors ever had, now have or hereafter can, shall or may have against the Government, the Foundation and MoMA Releasees, arising out of, resulting from, or in any way connected with the Painting or the matters or events alleged in the Action. It is understood and agreed that this is a full and final release made to fully and finally compromise any and all claims which were or could ever be asserted by the Estate Releasors against the Government, the Foundation and MoMA Releasees concerning the Painting or the matters or events alleged in the Action; provided however, that this release does not apply and is without prejudice to any claim the Estate may have against the Foundation for a breach of this Stipulation. Nothing in this release shall in any way release, discharge or relieve the Foundation from any of its obligations under this Stipulation.

c. Release by MoMA. MoMA, on behalf of itself and its past, present and future predecessors, successors, assigns, affiliates, subsidiaries, divisions, parents and related entities, heirs, agents, executors, administrators, employees, officers, directors, shareholders, partners, trustees, owners, advisors, receivers, indemnitors, indemnities, attorneys, insurers, transferees and representatives

of any kind whatsoever (the "MoMA Releasors"), irrevocably and unconditionally releases, settles, relinquishes, remises, acquits and fully, finally and forever discharges the Government (including, without limitation, the USAO, ICE, CBP, DHS, the United States Customs Service, and the Department of Treasury) the Estate and the Foundation, together with their past, present and future predecessors, successors, assigns, affiliates, subsidiaries, divisions, parents and related entities, heirs, agents, executors, administrators, employees, officers (including, but not limited to all present, past and future Vorstandsmitglieder), directors, shareholders, partners, trustees, owners, advisors, receivers, indemnitors, indemnities, attorneys, insurers, transferees and representatives of any kind whatsoever (the "Government, the Estate and the Foundation Releasees"), of and from any and all claims, demands, damages, actions, causes of action, debts, costs, expenses, compensation, liabilities, controversies or agreements of any kind whatsoever, arising out of, relating to or in any way connected with any action or inaction that has occurred prior to or upon the date hereof, which the MoMA Releasors ever had, now have or hereafter can, shall or may have against the Government, the Estate and the Foundation Releasees, arising out of, resulting from, or in any way connected with the Painting or the matters or events alleged in the Action. It is understood and agreed that this is a full and final release made to fully and finally compromise any and all claims which were or could ever be asserted by the MoMA Releasors against the Government, the Estate and the Foundation Releasees concerning the Painting or the matters or events alleged in the Action.

LAP d. Bar of Future Claims by the Foundation, the Estate or MoMA against the Government. The Foundation, the Estate and MoMA are barred from asserting any claim against the Government (including, without limitation, the USAO, ICE, CBP, DHS, the United States Customs Service, and the Department of Treasury) and any of its respective officers, agents and employees worldwide, in their official and individual capacities, in connection with or arising out of the seizure or restraint, or disposition of the Painting or the commencement or prosecution of the Action, including, without limitation, any claim that the Government did not have probable cause to seize the Painting, that the Foundation, the Estate or MoMA is a prevailing party or that the Foundation, the Estate or MoMA is entitled to attorney's fees or any award of interest. Furthermore, in consideration for the release of the Painting, the Foundation, the Estate and MoMA further agree to release and forever discharge the Government (including, without limitation, the USAO, ICE, CBP, DHS, the United States Customs Service and the Department of Treasury), and any of its officers, agents, servants, and employees, their heirs, successors, or assigns from any and all action, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and /or demands whatsoever in law or equity which any claimants, heirs, successors, or assigns ever had, now have, or may have in the future in connection in connection with the detention, seizure, release, or any other action or inaction of or regarding the Painting. The Foundation further agrees to hold and save the Government (including, without limitation, the USAO, ICE, CBP, DHS, the United States Customs Service and the Department of the Treasury), and their officers, agents, servants and employees, their heirs successors or assigns, harmless from any claims by any others, including costs and expenses for or on account of any and all lawsuits or claims of any character whatsoever in connection with the detention, seizure, release, or any other action or inaction of or regarding the Painting.

Except as amended hereby, all terms of the Stipulation shall remain in full force and effect.

AGREED AND ASSENTED TO:

ESTATE OF LEA BONDI JARAY

HERRICK, FEINSTEIN LLP

By: _____
Howard N. Spiegler
hspiegler@herrick.com

UNITED STATES OF AMERICA

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorneys for the United States of America

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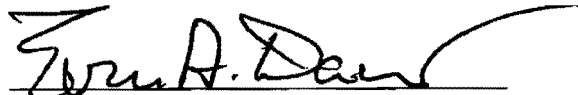
LEOPOLD MUSEUM-PRIVATSTIFUNG

SMITH, GAMBRELL & RUSSELL, LLP

By: _____
William M. Barron
WBarron@sgrlaw.com

MUSEUM OF MODERN ART

**CLEARY GOTTlieb STEEN &
HAMILTON LLP**

By:  _____
Evan A. Davis
edavis@cgsh.com

SO ORDERED:

HONORABLE LORETTA A. PRESKA
CHIEF UNITED STATES DISTRICT JUDGE


Date: _____

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UNITED STATES OF AMERICA

PREET BHARARA

United States Attorney for the
Southern District of New York
Attorneys for the United States of America

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By: _____
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SO ORDERED:


HONORABLE LORETTA A. PRESKA
CHIEF UNITED STATES DISTRICT JUDGE

Date:  _____
July 20, 2010